

REMARKS

Applicants' request for extension of time under 37 CFR 1.136(a), as well as Applicants' Request for Continued Examination and petition fee are enclosed herewith and filed simultaneously herewith.

The present invention is directed to a three-dimensional, unitary continuous thermoplastic article comprising a generally planar base portion and projecting element portions extending from the first side of the generally planar base and formed from first and second polymer materials. In a preferred embodiment, Applicants' unitary continuous thermoplastic article comprises a door mat having multi-color blade-like projections formed as an integral part thereof.

Previously pending claim 1 – 5 and 7 – 46 are currently pending with claims 16 – 33 withdrawn from consideration without prejudice. Claims 1 and 34 are amended herein without the addition of new matter. Claim 6 was previously been cancelled.

Claim Rejections 35 U.S.C. § 102

Claims 1, 3, 5, 7, 8, 10-12, 15, 34-40 and 42-44 stand rejected under 35 U.S.C. 102(e) as being anticipated by Sallee, U.S. Patent No. 5,976,643 (hereinafter referred to as "Sallee").

Applicants respectfully traverse the rejection of these claims under 35 U.S.C. 102(e). It is respectfully believed that all the claim limitations must be considered. In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). Moreover, "...a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 814 F. 2d 628, 631 (Fed. Cir. 1987). In addition, it is respectfully submitted, that the United States Patent & Trademark Office and the Federal Court of Appeals for the Federal Circuit, have steadfastly and

properly held the view that for a proper 35 U.S.C. Section 102 rejection, a single reference, i.e., Sallee, must identically describe each and every element of the rejected claim or else the reference fails to provide a proper basis for rejection under this statute.

Sallee is directed to a camouflage material and discloses a plurality of garnishes which are each individually anchored and physically attached to a base (e.g. by bonding with an adhesive to a tuft retaining anchor which is inserted into the base material to be either permanently or removably attached to the base by use of a retaining ring). Sallee does not disclose a unitary continuous thermoplastic article as claimed in the present application, but instead discloses an article assembled from individual, non-continuous polymer materials.

It is respectfully submitted that a plurality of separate, discrete garnishes each individually anchored to a base required in Sallee does not anticipate Applicants' claimed invention of a polymeric article comprising a generally planar base portion and at least one projecting element portion forming a **unitary continuous thermoplastic article**. It is respectfully believed that a proper application of a reference against a device described and claimed in a patent application requires broadly that the anticipatory device be substantially the same as the anticipated device in **structure**, function and result. Accordingly, it is respectfully submitted that Applicants' claims, as amended, are not anticipated by Sallee, are patentable thereover and are in condition for allowance.

Claims 1, 9, 10 and 15 stand rejected under 35 U.S.C. 102(b) as being anticipated by Zuiddam et. al., U.S. Patent No. 4,866,808 (hereinafter referred to as "Zuiddam").

Applicants respectfully traverse the rejection of these claims under 35 U.S.C. 102(b). Likewise with Zuiddam, it is respectfully submitted, that the United States Patent & Trademark Office and the Federal Court of Appeals for the Federal Circuit, have steadfastly and properly

held the view that for a proper 35 U.S.C. Section 102 rejection, a single reference must identically describe each and every element of the rejected claim or else the reference fails to provide a proper basis for rejection under this statute.

Zuiddam is directed to floor mats comprising a plurality of U-shaped profiles, each with a longitudinal channel extending the length thereon and having a bristle-like filament fixedly positioned therein and physically attached thereto. Zuiddam does not disclose a unitary continuous thermoplastic article as claimed in the present invention, but instead discloses an article assembled from individual, non-continuous materials, some of which may be made of polymers.

It is respectfully submitted that a plurality of U-shaped profiles each having a longitudinal channel and a bristle-like filament fixedly positioned therein and physically attached thereto, as required in Zuiddam, does not anticipate Applicants' claimed invention of a polymeric article comprising a generally planar base portion and at least one projecting element portion forming a **unitary continuous thermoplastic article**. It is respectfully believed that a proper application of a reference against a device described and claimed in a patent application requires broadly that the anticipatory device be substantially the same as the anticipated device in **structure**, function and result. Accordingly, it is respectfully submitted that Applicants' claims, as amended, are not anticipated by Zuiddam, are patentable thereover and are in condition for allowance.

Claim Rejections – 35 U.S.C. § 103

Claims 2 and 4 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sallee.

Applicants respectfully traverse this rejection of claims 2 and 4. Claim 4 is dependent on claim 2, which is dependent on independent claim 1. As stated above, Sallee is directed to a camouflage material and discloses a plurality of garnishes which are each individually anchored and physically attached to a base. Sallee does not disclose a unitary continuous thermoplastic article as claimed in the present application, but instead discloses an article assembled from individual, non-continuous polymer materials.

To establish obviousness, a reference or references must (1) suggest or motivate the modifications of the instant invention; (2) provide a reasonable expectation of success; and (3) teach or suggest all claim limitations. This three pronged test is cited in the MPEP 2142 as follows: “To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicants’ disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).”

It is respectfully submitted that Sallee fails to establish obviousness of Applicants’ invention, as presently claimed. There is no motivation, expectation of success or teaching to suggest all of the claim limitations of Applicants unitary continuous thermoplastic article from

Sallee's disclosure of a camouflage material having physically attached garnishes and comprising an assembled article having non-continuous material elements. While Sallee may disclose that multi-colored tufts may be employed in assembling his camouflage material, it is respectfully submitted that Sallee fails to provide teachings, suggestions or motivation (either in the reference itself or in the knowledge generally available to one of ordinary skill in the art) to modify the reference or to combine the reference teachings, with a reasonable expectation of success, and fails to teach, suggest or render obvious Applicants' use of different polymer materials (which may be of different colors) to be formed into his unitary continuous thermoplastic article. Accordingly, it is respectfully submitted that Applicants' claims, as amended, are patentable over Sallee and are in condition for allowance.

Claims 9 and 41 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sallee in view of Nesbitt, U.S. Patent No. 5,549,938, (hereinafter referred to as "Nesbitt").

Applicants respectfully traverse this rejection of claims 9 and 41. Claim 9 is dependent on independent claim 1 and claim 41 dependent on independent claim 34.

Nesbitt is directed to a removable camouflaging material for attachment to hunting or military vehicles and in preferred embodiments employs strips of magnetic material for attachment on metal vehicles surfaces. The camouflaging material is disclosed as magnetic panels or sheets having camouflage material imprinted or otherwise applied thereon (see Nesbitt, column 3, lines 1 – 5).

It is respectfully submitted that Sallee in view of Nesbitt fails to establish obviousness of Applicants' invention, as presently claimed. It is respectfully submitted that a combination of Sallee in view of Nesbitt fails to provide teachings, suggestions or motivation (either in the references themselves or in the knowledge generally available to one of ordinary skill in the art)

to modify the reference or to combine the reference teachings, with a reasonable expectation of success, and fails to render obvious all of the claim limitations of Applicants' unitary continuous thermoplastic article having slip resistant sheet laminated to its planar base portion.

Accordingly, it is respectfully submitted that Applicants' claims, as amended, are patentable over Sallee in view of Nesbitt and are in condition for allowance.

Claims 13 and 45 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sallee in view of Rawlinson, U.S. Patent No. 4,329,196 (hereinafter referred to as "Rawlinson").

Applicants respectfully traverse this rejection of claims 13 and 45. Claim 13 is dependent on independent claim 1 and claim 45 dependent on independent claim 34.

Rawlinson is directed to articles assembled by laminating polymeric materials together and discloses that polyethylene of a density between 0.90 and 0.93 can be employed in the assembly.

It is respectfully submitted that Sallee in view of Rawlinson fails to establish obviousness of Applicants' invention, as presently claimed. It is respectfully submitted that a combination of Sallee in view of Rawlinson fails to provide teachings, suggestions or motivation (either in the references themselves or in the knowledge generally available to one of ordinary skill in the art) to modify the reference or to combine the reference teachings, with a reasonable expectation of success, and fails to render obvious all of the claim limitations of Applicants' unitary continuous thermoplastic article, which is formed using different polymer materials, one of which may be polyethylene having a density as suggested by Rawlinson. Accordingly, it is respectfully submitted that Applicants' claims, as amended, are patentable over Sallee in view of Rawlinson and are in condition for allowance.

Claims 14 and 46 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sallee in view of Sesselmann, U.S. Patent No. 5,790,987 (hereinafter referred to as "Sesselmann").

Applicants respectfully traverse this rejection of claims 14 and 46. Claim 14 is dependent on independent claim 1 and claim 46 dependent on independent claim 34.

Sesselmann is directed articles of clothing to be worn by a person that are assembled from layers with odor absorbing means being enclosed therebetween. One of the odor absorbing means may include activated alumina as an odor absorbing agent.

It is respectfully submitted that Sallee in view of Sesselmann fails to establish obviousness of Applicants' invention, as presently claimed. Sesselmann teaches an article of clothing having multiple separate (non-continuous) fabric layers, one of which may have activated alumina (functional as an odor absorbing agent) physically incorporated therein. Applicants' claimed invention does not utilize activated alumina or any separate layers of fabric or like material in their unitary continuous thermoplastic article that is preferably utilized as a door mat.

It is respectfully submitted that combination of Sallee in view of Sesselmann fails to provide teachings, suggestions or motivation (either in the references themselves or in the knowledge generally available to one of ordinary skill in the art) to modify the reference or to combine the reference teachings, with a reasonable expectation of success, and fails to render obvious all of the claim limitations of Applicants' unitary continuous thermoplastic article, which is formed using different polymer materials, each of which may include at least one dispersed functional filler including silica, quartz, alumina, metal oxides and conductive fillers.

Application of: Roy Lee Hood
Serial No.: 10/814,679
Preliminary Amendment


Accordingly, it is respectfully submitted that Applicants' claims, as amended, are patentable over Sallee in view of Sesselmann and are in condition for allowance.

For all of the foregoing reasons in addition to others not noted herein, the rejections of Claims 2, 4, 9, 13, 14, 41, 45 and 46 under 35 U.S.C. § 102 and §103 are respectfully submitted to be inappropriate and withdraw of these rejections is respectfully requested. It is respectfully submitted that the claims, as amended, are in condition for allowance.

If any issue regarding the allowability of any of the pending claims in the present application could be readily resolved, or if other action could be taken to further advance this application such as an Examiner's amendment, or if the Examiner should have any questions regarding the present amendment, it is respectfully requested that the Examiner please telephone Applicant's undersigned attorney in this regard.

Respectfully submitted,

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